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Strict liability for injuries on Scotland's roads?

Posted on [October 20, 2013](#) by [mhogg](#)

The Scottish Parliament is to debate on 29th October 2013 a motion concerning strict liability on Scottish roads. The motion reads:

“Strict Liability

That the Parliament believes that the number of fatalities and injuries to pedestrians and cyclists on Scotland's roads, including in the Lothian region, is unacceptably high; recognises that the Scottish Government has funded a number of national cycle safety initiatives; notes that versions of a strict liability rule exist in the civil law of many European countries; notes that a number of walking and cycling organisations support the introduction of such a law in Scotland; understands that a petition by Cycle Law Scotland on this topic has secured nearly 5,000 signatures; considers that a stricter liability rule could have positive benefits for the safety of more vulnerable road users as part of a package of measures, and would welcome further debate on this proposal.”

The motion has cross-party support.

What is interesting to this observer is that it is not entirely clear to whom the proposed strict liability for injuries might be intended to apply. The website of the campaign backing the change in the law (www.cycling-accident-compensation.co.uk/strict-liability.aspx) talks about introducing strict liability as a means of protecting “cyclists and other vulnerable road users”, but does not clearly explain (so far as I can see) who these ‘other vulnerable road users’ are. Do they include pedestrians? The motion before the Scottish Parliament would suggest so. But would they also include, say, drivers of scooters and motorcycles? Such road users are often struck by drivers of cars, vans and lorries who fail to notice them, so there would seem to be a reasonable case for arguing that they are also ‘vulnerable road users’.

Ultimately, of course, vulnerability on the roads is a relative matter: a cyclist is vulnerable when compared to the driver of a car, but a pedestrian is also vulnerable when compared to a cyclist. It is not clear whether any Bill that might ultimately be proposed would reflect a hierarchical norm, making those higher up the hierarchy stand in a position of strict liability to those beneath them in the hierarchy, but also giving them the right to claim strict liability against those higher up the hierarchy. If strict liability is to be imposed, then such a hierarchical approach would seem fair, and indeed a hint that the organisers of the campaign agree with this is given in the statement on their website that any Bill would “reflect a hierarchy of road users”. That is a sensible concession, as it would seem lop-sided if, say, cyclists were to benefit from strict liability imposed on car drivers but not be subject to it they injured pedestrians.

In drafting any legislation, care would have to be taken to deal not just with strict liability in respect of injuries caused on the roads, but also on the pavements, given the propensity of some cyclists to cycle on the pavement or to switch between road and pavement and back to road at junctions where red lights are against them.

The details of any Bill may become clearer during the coming debate, which this observer will be watching with interest.

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